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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 GREGORY SMITH,
12 CDCR #V-40437,

13 Plaintiff,

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15 vs.
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18 R. COBB; CCI SHARPE; A. CLARK;
19 J. CAREY; E. SOLIS; ROBERT COBB;
20 FRANK SHARPE; S. DAROGLU;
21 R. PREZ; NAZAR BUDUHI,

22 Defendants.
23

Civil No. 15cv0176 GPC (WVG)

ORDER:

**(1) GRANTING MOTION FOR
LEAVE TO SUBSTITUTE
DEFENDANTS (ECF Doc. No. 6);**

AND

**(2) DIRECTING U.S. MARSHAL
TO EFFECT SERVICE OF FIRST
AMENDED COMPLAINT
PURSUANT TO
28 U.S.C. § 1915(d)
AND FED.R.Civ.P. 4(c)(3)**

24 Gregory Smith ("Plaintiff"), currently incarcerated at Folsom State Prison located
25 in Folsom, California, has filed a civil rights complaint ("Compl.") pursuant to 42 U.S.C.
26 § 1983 (Doc. No. 1). In addition, Plaintiff filed a Motion to Proceed In Forma Pauperis
27 ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF Doc. No. 2). On February 28, 2015, this
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1 Court granted Plaintiff's Motion to Proceed IFP but sua sponte dismissed his Complaint
2 for failing to state a claim. (ECF Doc. no. 3.)

3 Plaintiff has now filed a First Amended Complaint, along with a "Motion for
4 Leave to File an Amended Cover Sheet." (ECF Doc. Nos. 4, 6.) Plaintiff's Motion is
5 **GRANTED** and Defendants Daroglou, Prez and Buduhi have been added to the Court's
6 docket.

7 **II. SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) and § 1915A(b)**

8 The Prison Litigation Reform Act ("PLRA") requires that the Court review
9 complaints filed by all persons proceeding IFP and by those, like Plaintiff, who are
10 "incarcerated or detained in any facility [and] accused of, sentenced for, or adjudicated
11 delinquent for, violations of criminal law or the terms or conditions of parole, probation,
12 pretrial release, or diversionary program," "as soon as practicable after docketing." *See*
13 28 U.S.C. §§ 1915(e)(2) and 1915A(b).

14 As currently pleaded, the Court finds Plaintiff's First Amended Complaint is
15 sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and
16 1915A(b).¹ Accordingly, the Court will direct the U.S. Marshal to effect service on
17 Plaintiff's behalf. *See* 28 U.S.C. § 1915(d).

18 **III. CONCLUSION AND ORDER**

19 Good cause appearing, **IT IS HEREBY ORDERED** that:

20 1. Plaintiff's "Motion for Leave to File an Amended Cover Sheet" (ECF Doc.
21 No. 6) is **GRANTED**.

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27 ¹ Plaintiff is cautioned that "the sua sponte screening and dismissal procedure is
28 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a
defendant] may choose to bring." *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D.
Cal. 2007).

1 **IT IS FURTHER ORDERED** that:

2 2. The Clerk is **DIRECTED** to issue a summons as to Plaintiff's First
3 Amended Complaint (ECF Doc. No. 4) upon Defendants and forward it to Plaintiff along
4 with blank U.S. Marshal Form 285s for each named Defendant. In addition, the Clerk
5 is directed provide Plaintiff with a certified copy of the Court's Order granting Plaintiff's
6 Motion to Proceed IFP (ECF Doc. No. 3) and a certified copy of his First Amended
7 Complaint (ECF Doc. No. 6) and the summons so that he may serve each named
8 Defendant. Upon receipt of this "IFP Package," Plaintiff is directed to complete the
9 Form 285s as completely and accurately as possible, and to return them to the United
10 States Marshal according to the instructions provided by the Clerk in the letter
11 accompanying his IFP package.

12 3. Upon receipt, the U.S. Marshal is **ORDERED** to serve a copy of the First
13 Amended Complaint and summons upon the named Defendants as directed by Plaintiff
14 on the USM Form 285s. All costs of service will be advanced by the United States. *See*
15 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

16 4. Defendants are thereafter **ORDERED** to reply to Plaintiff's First Amended
17 Complaint within the time provided by the applicable provisions of Federal Rule of Civil
18 Procedure 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be
19 permitted to "waive the right to reply to any action brought by a prisoner confined in any
20 jail, prison, or other correctional facility under section 1983," once the Court has
21 conducted its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b),
22 and thus, has made a preliminary determination based on the face on the pleading alone
23 that Plaintiff has a "reasonable opportunity to prevail on the merits," the defendant is
24 required to respond).

25 5. Plaintiff must serve upon the Defendants or, if appearance has been entered
26 by counsel, upon Defendants' counsel, a copy of every further pleading or other
27 document submitted for consideration by the Court. Plaintiff must include with the
28 original paper to be filed with the Clerk of the Court, a certificate stating the manner in

1 which a true and correct copy of the document was served on the Defendants, or counsel
2 for Defendants, and the date of that service. Any paper received by the Court which has
3 not been properly filed with the Clerk, or which fails to include a Certificate of Service,
4 may be disregarded.

5 **IT IS SO ORDERED.**

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7 DATED: July 13, 2015

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9 HON. GONZALO P. CURIEL
10 United States District Judge
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